

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.



Finance Docket No 35705

JAMES RIFFIN AND ERIC STROHMEYER – ACQUISITION AND OPERATION
EXEMPTION – IN RIO GRANDE AND MINERAL COUNTIES, CO

ENTERED
Office of Proceedings
JAN - 8 2013

MOTION TO STRIKE

233652

1 James Riffin ("Riffin"), one of the Applicants in this proceeding, herewith files this Motion to Strike any representations made by Clyde Dooley on behalf of other individuals / corporate entities, in the document filed in this proceeding by Mr. Dooley on January 4, 2013, which document was entitled "Petition and Comments of the City of Creede, CO, Mineral County, CO, Elk Creek Ranch, Wason Ranch Corporation, and Certain Individuals with Homes in Masonic Park to Reject Notice of Exemption," ("Petition to Reject" or "Petition") and in support hereof, states:

2. In *Norfolk Southern Railway Company – Petition for Exemption – In Baltimore City and Baltimore County, MD*, STB Docket No. AB-290 (Sub-No 311X), Served January 29, 2010, Note 1, slip op. at 1, the Board made the following statement:

"Riffin purports to represent all the Offerors and possibly others in this filing. Because Riffin is neither a licensed attorney nor practitioner approved to practice before the Board, he may only represent himself. See 49 CFR 1103.2 and 1103.3"

3. The Board "acts arbitrarily and capriciously if it reverse[s] its position in the face of a precedent it has not persuasively distinguished." " *New York Cross Harbor R.R. v. Surface Transp.*, 374 F.3d 1177, 1181 (D.C. Cir. 2004).

4. Mr. Dooley is not a license attorney, nor has he been approved to practice before the Board. Consequently, "he may only represent himself."

5. The Petition to Reject was purportedly filed on behalf of a number of entities other than Mr Dooley.

6 WHEREFORE, since an individual "may only represent himself," Riffin would move to strike the Petition to Reject filed by Mr. Dooley, as to all entities other than Mr Dooley in his individual capacity.

7. Mr Dooley has failed to provide evidence that he, in his individual capacity, or for that matter, that the City of Creede, CO, has standing to participate in this proceeding. He has failed to offer any evidence that he might suffer some form of economic injury if Applicants' Notice of Exemption is not rejected

8. The Board's regulations do not encourage public comments in exemption proceedings See 49 CFR 1121.4(a), which states:

"(a) Exemption proceedings are informal, and public comments are **generally not sought** during consideration of exemption petition proposals, except as provided in §1121.4(c). However, the Board may consider during its deliberation any public comments filed in response to a petition for exemption " **Bold added.**

9 49 CFR 1121 4(c) (1) states:

"(c)(1) If the impact of the proposed individual exemption cannot be ascertained from the information contained in the petition or accompanying submissions, or significant adverse impacts might occur if the proposed exemption were granted, the Board may, in its discretion

"(i) Direct that additional information be filed, or

(ii) Publish a notice in the Federal Register requesting public comments

10. 49 CFR 1121.3(c) **only permits petitions to revoke, not petitions to reject.**

11. WHEREFORE, for the foregoing reasons, Riffin would move to strike the Petition to Reject that was filed by Mr Dooley, and for such other and further relief as would be appropriate.


Respectfully submitted.



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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of January, 2013, a copy of the foregoing Motion to Strike, was served by first class mail, postage prepaid, upon the parties noted below.



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